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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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| 11 UNITED STATES OF AMERICA |) CR. NO. S-05-240 GEB |
| |) |
| 12 Plaintiff, |) GOVERNMENT'S SECOND SUPPLEMENTAL |
| |) OPPOSITION TO DEFENDANTS' SECOND |
| 13 v. |) MOTION FOR RECONSIDERATION |
| |) REGARDING RELEASE ON BOND |
| 14 HAMID HAYAT, and |) |
| 15 UMER HAYAT, |) Date: Sept. 23, 2005 |
| |) Time: 2:00 p.m. |
| 16 Defendants. |) Court: Hon. Chief Mag. Judge |
| |) Gregory G. Hollows |
| 17 |) |

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19 Plaintiff United States of America files this second
20 supplemental opposition to defendant Umer Hayat's second motion for
21 reconsideration regarding release on bond.

22 A. The First Superseding Indictment

23 On September 22, 2005, the Grand Jury returned a First
24 Superseding Indictment. The Indictment charges defendant Hamid
25 Hayat with providing material support to terrorists in violation of
26 18 U.S.C. § 2339A (Count 1, a new charge), and two counts of making
27 false statements in violation of 18 U.S.C. § 1001 (Count 2 and 3,
28 the same charges alleged in the original Indictment, but

renumbered). The Indictment also charges defendant Umer Hayat with one count of making a false statement (Count 4, the same charge alleged in the original Indictment, but renumbered).

B. This Court May Now Consider Detention of Umer Hayat on the Grounds That His Case Involves An Offense Listed in 18 U.S.C. § 2332b(g) (5) (B)

In its opposition, the government indicated that a detention hearing for Umer Hayat was appropriate, and that he could be detained on the basis of flight and/or danger, based on two factors under 18 U.S.C. § 3142(f): 1) because this case involved a serious risk of flight by defendant Umer Hayat; and 2) because this case involved a crime of violence. There is now a third factor which justifies a detention hearing and consideration of both flight and/or danger: the case against Umer Hayat "is a case that involves ... an offense listed in section 2332b(g) (5) (B) for which a maximum term of imprisonment of 10 years or more is prescribed." 18 U.S.C. § 3142(f) (1) (A) (emphasis added). Hamid Hayat has been charged with providing and concealing material support to terrorists in violation of 18 U.S.C. § 2339A. Providing/concealing material support to terrorists, 18 U.S.C. § 2339A, is listed under 18 U.S.C. 2332b(g) (5) (B); and the maximum authorized sentence for material support is 15 years. See 18 U.S.C. §§ 2339A, 2332b(g) (5) (B). The relevant question with respect to Umer Hayat, though, is whether the case against Umer Hayat also "involves" an offense listed in section 2332b(g) (5) (B).

It is important to note that the Bail Reform Act does not state that a detention hearing is only authorized if the crime charged against a defendant is a crime of violence or if the crime charged

1 against a defendant is a listed terrorism offense under section
2 2332b(g)(5)(B). The Act states that a detention hearing is
3 authorized "in a case that *involves* ... a crime of violence," or
4 that a detention hearing is authorized "in a case that *involves* ...
5 an offense listed in section 2332(g)(5)(B)..." 18 U.S.C. § 3142
6 (f)(1)(A) (emphasis added). This is a critical distinction, and one
7 that has been recognized by the courts.

8 United States v. Byrd, 969 F.2d 106 (5th Cir. 1992) is on
9 point. Byrd was charged with receiving a videotape depicting minors
10 engaged in sexually explicit conduct. The Fifth Circuit noted that,
11 for the purposes of 18 U.S.C. § 3142(f), "it is not necessary that
12 the *charged offense* be a crime of violence; only that the case
13 involve a crime of violence or any one or more of the §3142(f)
14 factors." Id. at 110. It noted that "the proof of a nexus between
15 the non-violent offense charged and one or more of the six § 3142(f)
16 factors is crucial." Id. It noted, by way of example, that the
17 government could have established that Byrd's case was "a case that
18 involves a crime of violence," if it "demonstrat[ed] child
19 molestation-an act of violence-by Dr. Byrd, and that such specific
20 act or acts are reasonably connected to the offense with which he
21 [was] charged." Id. The court then concluded that the government
22 had failed to prove that the charged child pornography case, in
23 fact, was reasonably connected to a crime of violence.

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25 In the case against Umer Hayat, thus, it is not necessary that
26 Umer Hayat be charged with an offense listed in section
27 2332b(g)(5)(B) (namely, providing/concealing material support). It
28 only must be shown that his case *involves* an offense listed in

1 section 2332b(g)(5)(B)" See id. at 110. The charged case against
2 Umer Hayat, namely, making a false statement in a matter related to
3 international and domestic terrorism, by its nature and as alleged,
4 does involve a section 2332b(g)(5)(B) offense, namely provision of
5 and concealment of material support by Hamid Hayat. Recall that
6 Umer Hayat purchased an airline ticket for his son, knowing that his
7 son intended to go to a jihadi camp. Moreover, after Hamid Hayat
8 attended a jihadi camp and had returned to the United States, Umer
9 Hayat, like his son, knowingly concealed his son's conduct from the
10 FBI. (Indeed he was charged specifically with a violation of 18
11 U.S.C. § 1001 based on this lie). These two facts, particularly the
12 latter, is sufficient, for the purposes of bail proceedings, to
13 establish that Umer Hayat's case "involves" a 2332b(g)(5)(B)
14 offense. Umer Hayat's conduct, including his charged lie related to
15 his son, directly relate to his son's 2332b(g)(5)(B) offense. As
16 such, defendant Umer Hayat's case is one "that involves ... an
17 offense listed in section 2332b(g)(5)(B)," a detention hearing for
18 Umer Hayat can be predicated on this ground, and detention of Umer
19 Hayat can be predicated on either flight and/or danger grounds.
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21 DATED: September 23, 2005

Respectfully submitted,

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